

Date of decision: 12-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Miss Daxa R. Vyas for the petitioners
Mr. D.A.Bambania for the respondents.

Coram: S. K. KESHOTE, J
(12-12-1995)

ORAL JUDGMENT:

Heard the learned counsel.R

petitioners have filed this writ petition challenging the memorandum annexure-D dated 9th November, 1982 by which the petitioners were directed to pass the competitive examination to be held by the Gujarat Public Service Commission for the post of Stenographer Grade II within a certain period as provided therein.

2. The matter had come up for hearing before this Court on 3-12-1982 when notice was issued to the respondents. On 17-1-1983 rule was issued and ad-interim relief in terms of para 19(B) was granted till further orders. Para 19(B) of the petition reads as under:

"19(B) pending admission, hearing and final disposal of this petition, the Hon'ble Court may be pleased to stay the operation and implementation of the memorandum at annexure "D" to the petition."

3. Petitioner No.1 had entered Government service on December 30, 1959 and petitioner No.2 on 25th June, 1960. Both were initially appointed as typist in the office of Collector and Divisional Commissioner respectively. Later on they were selected as Stenographer (Gujarati) Grade III and were appointed as such. Petitioner No.1 was appointed as Stenographer Grade II in the office of the Divisional Commissioner, Revenue Department, in the year 1963. Though at one point of time he was reverted from that post, he was again appointed on the post with effect from 1-7-1965 and since that date he is continuously working on the post without any interruption. Petitioner No.2 was appointed Stenographer Grade II in the office of the District Development Officer, Junagadh in the year 1962. Like petitioner No.1, he was also reverted to the lower post in the year 1963 and again he was appointed as Stenographer Grade II and is continuously working as such.

4. The petitioners have come up with the case that merely because subsequently the offices in which they are working as Stenographer Grade II have been brought within the purview of the Gujarat Public Service Commission, it is rather very harsh and unreasonable on the part of the respondents to ask the petitioners to pass the examination of Stenographer Grade II conducted by Gujarat Public Service Commission. The petitioners stated that they are working on the post of Stenographer Grade II for more than nineteen years. In para 2 of the writ petition the petitioners have come up with the case that the respondents have regularised

the services of the persons working as Stenographer Grade II and dispensed with the requirement of passing the examination conducted by G.P.S.C.

5. During the course of argument it is admitted by the counsel appearing for the petitioners and the respondents that petitioner No.1 has already retired from service. So far as petitioner No.2 is concerned, it has been admitted by the counsel that he is due for retirement within a short period.

6. From the affidavit of respondents dated 16th March, 1983 it gives out that the services of stenographers mentioned in para 2 of the petition were regularised without passing the competitive examination for the said post conducted by the Gujarat Public Service Commission. It has been stated that as a matter of leniency it was decided to regularise their appointments under Government Resolution, General Administration Department, dated 15th September, 1976, despite the fact that such regularisation test is not held now. It has further been stated that the Government had regularised the services of irregularly recruited/appointed stenographers Grade II on two different occasions (i.e. those who had completed two years of service on 31st December, 1972 and 1st April, 1976) by amending the rules statutorily. It is not in dispute that the petitioners were appointed as Stenographer Grade II in the year 1963. Though petitioner No.1 was reverted for some time he has been continuously working on the post since 1965. Petitioner No.1 has retired from service and petitioner No.2 is due to retire in the near future, and it is not the case of the respondents that they would like to insist now for passing of examination for Stenographer Grade II by the petitioners at this stage.

7. Taking into consideration the facts and circumstances of the case and particularly the fact that the memorandum annexure-D has been stayed by this Court about thirteen years back, and petitioner No.1 has retired and petitioner No.2 is about to retire from service in the near future, this writ petition is allowed and the memorandum dated 9-11-1982 at annexure-D to the petition is quashed and set aside. However, this decision will not be taken as a precedent as the petition has been decided in the peculiar facts and circumstances of this case. Rule made absolute accordingly, with no order as to costs.

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